

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

OFFICE: PALM SPRINGS-SOUTH COAST  
RESOURCE AREA

CONTRACT NO: CA-22901

CONTRACT FOR THE SALE OF UNITS OF MATERIALS.

This agreement is made under authority of the act of July 31, 1947 (61 Stat. 681) as amended (30 U.S.C. 601-604) and the regulations thereunder set forth in 43 CFR, Group 3600, between the United States of America (hereinafter called the "Government"), acting through the Authorized Officer of the Bureau of Land Management (hereinafter called the "Authorized Officer"), and Transmix Corporation. (hereinafter called the "Purchaser").

Witnesseth, That the parties hereto mutually agree as follows:

- Sec. 1. Effective dates - The Purchaser will be obligated for all terms of the contract upon signing. The production period for this contract will be a maximum of ten years with an effective date of the day after expiration of Contract Serial No. 20139 between the Purchaser and the Authorized Officer.
- Sec. 2. Contract area - The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, the mineral materials described in Sec. 3 below, for severance, extraction, and removal, and occupation for mining purposes on the following-described lands situated in the County of Los Angeles, State of California.

Township: 4 North, Range 14 West, SB Meridian,

Section 1: Lot 2, SW1/4 NE1/4, NW1/4 SE1/4, SW 1/4 SE 1/4  
Section 9: SE 1/4 NE 1/4, NE 1/4 SW 1/4, S1/2 SW 1/4, SE 1/4  
Section 12: NW 1/4 NE 1/4  
Section 16: NW 1/4 NE 1/4, N 1/2 NW 1/4

Containing: 640.16 acres more or less.

- Sec. 3. Amount and price of materials - The total purchase price shall be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

| Kind of Materials | Quantity                 | Price<br>per unit | Total        |
|-------------------|--------------------------|-------------------|--------------|
| Sand and Gravel   | 42,160,000<br>short tons | \$0.50            | \$21,080,000 |

The contract measure will be based on a truck loaded ton of finished product (at scale).

Determination by the Authorized Officer of the quantity of materials taken shall be by weight and shall be binding on Purchaser subject to appeal only as provided in Sec. 8.

**Sec. 4. Payments, passage of title, risk of loss reappraisals.**

Title to materials sold hereunder shall pass to Purchaser only upon severance or extraction of and proper payment for such materials. No part of the materials sold hereunder shall be severed, extracted, or removed by Purchaser until advance payment for such materials has been made in accordance with the following.

- a) The bid deposit for this contract will be applied to the first installment payment of the total contract. Each installment payment shall be ten per cent of the fair market value of the total contract amount based on appraisal in effect on the due date of each installment payment, or the bid amount, whichever is greater.

Each additional installment payment shall become due and payable without prior notice whenever the value of materials severed or extracted hereunder shall equal the sum of the first and subsequent installments already paid by the Purchaser, or on the anniversary date of the previous installment payment, whichever is sooner.

The total purchase price shall equal the sum of the total quantities severed and removed or designated for severance and removal under the terms of this contract, multiplied by the royalty rate in effect at the time advance payment is made. The balance due where less than a full installment remains to be paid upon the "total price," will be the value of material remaining to be severed and removed for which advance payment has not already been made. The total purchase price must be paid prior to sixty (60) days before expiration date of the contract.

If any additional installment payment is not made by the time required under this section, operations under contract shall be suspended immediately and no materials may be removed from contract area during the period of such suspension. Materials severed, extracted, or removed during any such period of suspension shall be deemed taken in trespass and be charged to and paid for by Purchaser at triple the unit contract price therefor, or at triple the reappraised unit price if a reappraisal has been made. Resumption of taking will be authorized in writing, by the Authorized Officer only after such required payments have been made. Any suspension under this section shall not be added to the period of the contract.

- b) Risk of loss - Purchaser shall assume complete risk of loss for all materials, title to which has passed. If material covered by this contract, title to which has not passed, is damaged or destroyed, Purchaser shall be liable for all loss suffered if Purchaser, his contractors, or subcontractors, or employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, Purchaser shall be liable for loss sustained to the extent that it is caused by his failure to sever, extract, or remove the damaged material under the circumstances and terms of this contract except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.
- c) The price per short ton of finished product for which payment is made shall be reappraised at intervals of not less than every two years thereafter in accordance with the regulations set forth in 43 CFR Section 3610.1-2(b), and will be the higher of either the original royalty bid of \$0.50 per short ton or the market value as established by appraisal.

- d) Refunds or credits will be made to the Purchaser as permitted by the regulations set forth in 43 CFR Section 3610.1-4.

**Sec. 5. Bonds -**

- a) The Purchaser shall within the 30 day period after receipt of this contract file with the Authorized Officer and shall maintain at all times the bonds required under the regulations in 43 CFR 3610.1-5 to be furnished as a condition to the issuance of this contract in the amount of twenty per cent of the fair market value of the total contract amount.
- b) If all terms of the contract are not faithfully and fully performed by Purchaser, the performance bond required by 43 CFR 3610.1-5 shall be forfeited to the amount of damages determined by the Authorized Officer. If damages exceed the amount of the bond, Purchaser hereby acknowledges liability for such excess. Upon satisfactory performance of this contract, the bonds shall be canceled, or if cash or United States bonds were furnished in lieu of a surety bond, such cash or securities shall be returned to Purchaser.
- c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, he or she may require a new bond which is satisfactory to him or her.

**Sec. 6. Expiration of contract -** This contract shall expire when the total amount of materials sold has been severed and removed or 10 years from the effective date of the production period unless an extension of time is granted.

**Sec. 7 Equal opportunity clause -** This permit is subject to the provisions of Executive Order No. 11246 of Sept 24, 1965, as amended, which sets forth the nondiscrimination clauses. A copy of this order may be obtained from the signing officer.

**Sec. 8 Appeal -** An appeal from a decision by the Authorized Officer may be made pursuant to 43 CFR Part 4 and to the Interior Board of Land Appeals (IBLA).

**Sec. 9 Special clauses and reserved items -** The rights of Purchaser shall be subject to the regulations in 43 CFR Group 3600, (which are made a part of this contract), and the following stipulations marked Exhibit A, which are attached hereto and made a part hereof. The attached stipulations appear as 1 page hereafter.

Tally weight tickets will be required to be furnished to the Authorized Officer. Weights will be made of finished product at certified scales, at the pit site or another point approved by the Authorized Officer. All tickets must show the material weight, time of weighing and weighmaster's signature, and shall also include gross weight, tare weight and calculated net weight unless another method of the weighing is approved by the Authorized Officer. All weights will be attached to a monthly reporting form (Exhibit B). Each report form and attached weight tickets shall be sent to the Authorized Officer no later than 10 days after the report month.

The Authorized Officer may grant an extension of time up to one year in accordance with the regulations in compensation for periods of mine plan review exceeding six months or legal challenges lasting more than six months which inhibit fulfillment of the contract by the Purchaser. This does not limit the Authorized Officer from issuing an extension of the contract for other reasons authorized by the regulations.

Sec. 10 Force Majeure - The Purchaser shall not be deemed to be in default in the performance of the terms of this contract if Purchaser is prevented from severing, or removing sand and gravel from the subject property, or otherwise prevented from performing the terms of the contract, by causes beyond its control, including, but without being limited to: acts of God or the public enemy, interference, rulings or decisions by municipal, federal, state, or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, state, federal, or other governmental bodies; and catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the Purchaser. If any of the stated contingencies occur, Purchaser shall immediately give the Authorized Officer written notice of the cause of the delay of production or performance. The Purchaser if delayed by force majeure shall use reasonable diligence to correct the cause of delay, if correctable, and if the condition that caused the delay is corrected, Purchaser shall immediately give the Authorized Officer written notice thereof and shall resume operations under this contract. If the condition that caused the delay cannot be corrected within six months despite reasonable diligence by the Purchaser to correct the condition, then the Purchaser may thereafter elect to terminate this contract without further obligation by giving written notice to the Authorized Officer of the election to terminate. This shall be in addition to rather than in limitation of any right on the part of the Purchaser to seek a rescission of the contract under the doctrines of impossibility of performance, frustration of purpose or other legal principles as might be applicable.

In Witness whereof, the parties hereto have executed this contract as the day first above written.

Purchaser

The United States of America

Transmix Corporation

(Individual or firm name)

4760 Valley Boulevard

Los Angeles, California 90032

(Address)

Daniel A. Pelton

(Signature)

March 8, 1990

(Date)

Kenneth Halderley

(Authorized Officer)

Area Manager

(Title)

3/9/90

(Date)

If this contract is executed by a corporation, it must affix its corporate seal.

**EXHIBIT A**

**Special Stipulations CA-22901**

1. The Purchaser must comply with the rules and regulations of the South Coast Air Quality Management District.
2. The Purchaser must comply with the rules and regulations of the State of California, Regional Water Quality Control Board, Los Angeles Region.
3. The Purchaser must comply with the State of California Mining and Reclamation Act.
4. The Purchaser must comply with both the Act of June 21, 1949 (30 U.S.C. 54) and Section 9 of the Act of December 29, 1916 (39 Stat. 864 ; 43 U.S.C. 299).
5. In accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2, a mining and reclamation plan shall be submitted to the Authorized Officer. Operations will not commence until activities proposed in the mining and reclamation plan are approved by the Authorized Officer. Submission of the mining and reclamation plan must be in accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2. The plans must include measures to prevent hazards to public health and safety and measures to prevent unnecessary and undue degradation as defined at 43 CFR 3600.0-5(k).
6. Prior to new surface disturbance for pit expansion, an archaeological survey must be completed for the area to be disturbed at the Purchaser's expense. It may be expedient to survey the entire 640 acres at once to avoid future delays. National Register quality properties, should any exist on the sale parcel, must be either avoided or mitigated through data recovery at the Purchaser's expense. Survey, evaluation, and necessary mitigation will meet BLM approval and will be performed in accordance with the provisions of Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800).
7. Prior to new surface disturbance for pit expansion, a survey must be completed at the Purchaser's expense on the area below an elevation 2000 feet, approximately 25 acres, to determine whether the plant species or habitat of Nevin's barberry (Mahonia nevinii) is present. Any of the surveyed area found to be habitat for this species must either (1) not be disturbed by any activity associated with the operation, or (2) be mitigated by measures included in the mining and reclamation plan and approved by the Authorized Officer.
8. No portion of unmined material of the contract amount of contract CA-20139 will be applied to contract CA-22901.

EXHIBIT B

BUREAU OF LAND MANAGEMENT  
California Desert District  
Palm Springs-South Coast Resource Area  
400 So. Farrell Drive, Suite B-205  
Palm Springs, California 92262

PRODUCTION REPORT FOR MONTH ENDING \_\_\_\_\_, 19\_\_\_\_

PURCHASER \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

QUANTITY REMOVED \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

Attach copies of all weight tickets for the reporting period.

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The United States Criminal Code (18 U.S.C. 1001) makes it a criminal offense to willfully make a false statement or representation to any Department or Agency of the United States as to any matter within its jurisdiction. Any person or persons making a false statement or representation shall be subject to a fine of up to \$10,000 and imprisonment for up to five years for each offense.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

OFFICE: PALM SPRINGS-SOUTH COAST  
RESOURCE AREA

CONTRACT NO: CA-20139

CONTRACT FOR THE SALE OF UNITS OF MATERIALS

This agreement is made under authority of the act of July 31, 1947 (61 Stat. 681) as amended (30 U.S.C. 601-604) and the regulations thereunder set forth in 43 CFR, Group 3600, between the United States of America (hereinafter called the "Government"), acting through the Authorized Officer of the Bureau of Land Management (hereinafter called the "Authorized Officer"), and Transmix Corporation. (hereinafter called the "Purchaser").

Witnesseth, That the parties hereto mutually agree as follows:

- Sec. 1. Effective dates - The Purchaser will be obligated for all terms of the contract upon signing. The production period for this contract will be a maximum of ten years with an effective date beginning the day the mining plan, to be submitted by the Purchaser, is approved by the Authorized Officer.
- Sec. 2. Contract area - The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, the mineral materials described in Sec. 3 below, for severance, extraction, and removal, and occupation for mining purposes on the following-described lands situated in the County of Los Angeles, State of California.

Township: 4 North, Range 14 West, SB Meridian,

Section 1: Lot 2, SW1/4 NE1/4, NW1/4 SE1/4, SW 1/4 SE 1/4  
Section 9: SE 1/4 NE 1/4, NE 1/4 SW 1/4, S1/2 SW 1/4, SE 1/4  
Section 12: NW 1/4 NE 1/4  
Section 16: NW 1/4 NE 1/4, N 1/2 NW 1/4

Containing: 640.16 acres more or less.

- Sec. 3. Amount and price of materials - The total purchase price shall be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

| Kind of Materials | Quantity                 | Price<br>per unit |             |
|-------------------|--------------------------|-------------------|-------------|
| Sand and Gravel   | 14,000,000<br>short tons | \$0.50            | \$7,000,000 |

The contract measure will be based on a truck loaded ton of finished product (at scale).

Determination by the Authorized Officer of the quantity of materials taken shall be by weight and shall be binding on Purchaser subject to appeal only as provided in Sec. 8.

**Sec. 4. Payments, passage of title, risk of loss reappraisals.**

Title to materials sold hereunder shall pass to Purchaser only upon severance or extraction of and proper payment for such materials. No part of the materials sold hereunder shall be severed, extracted, or removed by Purchaser until advance payment for such materials has been made in accordance with the following.

- a) The bid deposit for this contract will be applied to the first installment payment of the total contract. Each installment payment shall be ten per cent of the fair market value of the total contract amount based on appraisal in effect on the due date of each installment payment, or the bid amount, whichever is greater.

Each additional installment payment shall become due and payable without prior notice whenever the value of materials severed or extracted hereunder shall equal the sum of the first and subsequent installments already paid by the Purchaser, or on the anniversary date of the previous installment payment, whichever is sooner.

The total purchase price shall equal the sum of the total quantities severed and removed or designated for severance and removal under the terms of this contract, multiplied by the royalty rate in effect at the time advance payment is made. The balance due where less than a full installment remains to be paid upon the "total price," will be the value of material remaining to be severed and removed for which advance payment has not already been made. The total purchase price must be paid prior to sixty (60) days before expiration date of the contract.

If any additional installment payment is not made by the time required under this section, operations under contract shall be suspended immediately and no materials may be removed from contract area during the period of such suspension. Materials severed, extracted, or removed during any such period of suspension shall be deemed taken in trespass and be charged to and paid for by Purchaser at triple the unit contract price therefor, or at triple the reappraised unit price if a reappraisal has been made. Resumption of taking will be authorized in writing, by the Authorized Officer only after such required payments have been made. Any suspension under this section shall not be added to the period of the contract.

- b) Risk of loss - Purchaser shall assume complete risk of loss for all materials, title to which has passed. If material covered by this contract, title to which has not passed, is damaged or destroyed, Purchaser shall be liable for all loss suffered if Purchaser, his contractors, or subcontractors, or employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, Purchaser shall be liable for loss sustained to the extent that it is caused by his failure to sever, extract, or remove the damaged material under the circumstances and terms of this contract except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.
- c) The price per short ton of finished product for which payment is made during the first four years following approval of the mining plan by the Authorized Officer shall be the bid royalty of \$0.50 per short ton, and shall not be subject to reappraisal during that four year period. The market value of the material for which payment has not yet been made shall be reappraised at the expiration of four years and at intervals of not less than every two years thereafter in accordance with the regulations set forth in 43 CFR Section 3610.1-2(b). After the first four years



the royalty will be the higher of either the original royalty bid of \$0.50 per short ton or the market value as established by appraisal.

- d) Refunds or credits will be made to the Purchaser as permitted by the regulations set forth in 43 CFR Section 3610.1-4.

#### Sec. 5. Bonds -

- a) The Purchaser shall within the 30 day period after receipt of this contract file with the Authorized Officer and shall maintain at all times the bonds required under the regulations in 43 CFR 3610.1-5 to be furnished as a condition to the issuance of this contract in the amount of twenty per cent of the fair market value of the total contract amount.
- b) If all terms of the contract are not faithfully and fully performed by Purchaser, the performance bond required by 43 CFR 3610.1-5 shall be forfeited to the amount of damages determined by the Authorized Officer. If damages exceed the amount of the bond, Purchaser hereby acknowledges liability for such excess. Upon satisfactory performance of this contract, the bonds shall be canceled, or if cash or United States bonds were furnished in lieu of a surety bond, such cash or securities shall be returned to Purchaser.
- c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, he or she may require a new bond which is satisfactory to him or her.

Sec. 6. Expiration of contract - This contract shall expire when the total amount of materials sold has been severed and removed or 10 years from the effective date of the production period unless an extension of time is granted.

Sec. 7 Equal opportunity clause - This permit is subject to the provisions of Executive Order No. 11246 of Sept 24, 1965, as amended, which sets forth the nondiscrimination clauses. A copy of this order may be obtained from the signing officer.

Sec. 8 Appeal - An appeal from a decision by the Authorized Officer may be made pursuant to 43 CFR Part 4 and to the Interior Board of Land Appeals (IBLA).

Sec. 9 Special clauses and reserved items - The rights of Purchaser shall be subject to the regulations in 43 CFR Group 3600, (which are made a part of this contract), and the following stipulations marked Exhibit A, which are attached hereto and made a part hereof. The attached stipulations appear as 1 page hereafter.

Tally weight tickets will be required to be furnished to the Authorized Officer. Weights will be made of finished product at certified scales, at the pit site or another point approved by the Authorized Officer. All tickets must show the material weight, time of weighing and weighmaster's signature, and shall also include gross weight, tare weight and calculated net weight unless another method of the weighing is approved by the Authorized Officer. All weights will be attached to a monthly reporting form (Exhibit B). Each report form and attached weight tickets shall be sent to the Authorized Officer no later than 10 days after the report month.

The Authorized Officer may grant an extension of time up to one year in accordance with the regulations in compensation for periods of mine plan review exceeding six months or legal challenges lasting more than six months which inhibit fulfillment of the contract by the Purchaser. This does not limit the Authorized Officer from issuing an extension of the contract for other reasons authorized by the regulations.

Sec. 10 Force Majeure - The Purchaser shall not be deemed to be in default in the performance of the terms of this contract if Purchaser is prevented from severing, or removing sand and gravel from the subject property, or otherwise prevented from performing the terms of the contract, by causes beyond its control, including, but without being limited to: acts of God or the public enemy, interference, rulings or decisions by municipal, federal, state, or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, state, federal, or other governmental bodies; and catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the Purchaser. If any of the stated contingencies occur, Purchaser shall immediately give the Authorized Officer written notice of the cause of the delay of production or performance. The Purchaser if delayed by force majeure shall use reasonable diligence to correct the cause of delay, if correctable, and if the condition that caused the delay is corrected, Purchaser shall immediately give the Authorized Officer written notice thereof and shall resume operations under this contract. If the condition that caused the delay cannot be corrected within six months despite reasonable diligence by the Purchaser to correct the condition, then the Purchaser may thereafter elect to terminate this contract without further obligation by giving written notice to the Authorized Officer of the election to terminate. This shall be in addition to rather than in limitation of any right on the part of the Purchaser to seek a rescission of the contract under the doctrines of impossibility of performance, frustration of purpose or other legal principles as might be applicable.

In Witness whereof, the parties hereto have executed this contract as the day first above written.

Purchaser

The United States of America

Transmix Corporation  
(Individual or firm name)  
4760 Valley Boulevard  
Los Angeles, California 90032  
(Address)  
Daniel A. Keller  
(Signature)  
March 8, 1990  
(Date)

Gunnar Haldering  
(Authorized Officer)  
Area Manager  
(Title)  
3/9/90  
(Date)

If this contract is executed by a corporation, it must affix its corporate seal.

EXHIBIT A

Special Stipulations CA-20139

1. The Purchaser must comply with the rules and regulations of the South Coast Air Quality Management District.
2. The Purchaser must comply with the rules and regulations of the State of California, Regional Water Quality Control Board, Los Angeles Region.
3. The Purchaser must comply with the State of California Mining and Reclamation Act.
4. The Purchaser must comply with both the Act of June 21, 1949 (30 U.S.C. 54) and Section 9 of the Act of December 29, 1916 (39 Stat. 864 ; 43 U.S.C. 299).
5. In accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2, a mining and reclamation plan shall be submitted to the Authorized Officer within 90 days of receipt of this contract. Operations will not commence until activities proposed in the mining and reclamation plan are reviewed in accordance with the National Environmental Policy Act and approved by the Authorized Officer. Submission of the mining and reclamation plan must be in accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2. The plans must include measures to prevent hazards to public health and safety and measures to prevent unnecessary and undue degradation as defined at 43 CFR 3600.0-5(k).
6. Prior to new surface disturbance for pit expansion, an archaeological survey must be completed for the area to be disturbed at the Purchaser's expense. It may be expedient to survey the entire 640 acres at once to avoid future delays. National Register quality properties, should any exist on the sale parcel, must be either avoided or mitigated through data recovery at the Purchaser's expense. Survey, evaluation, and necessary mitigation will meet BLM approval and will be performed in accordance with the provisions of Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800).
7. Prior to new surface disturbance for pit expansion, a survey must be completed at the Purchaser's expense on the area below an elevation 2000 feet, approximately 25 acres, to determine whether the plant species or habitat of Nevin's barberry (Mahonia nevinii) is present. Any of the surveyed area found to be habitat for this species must either (1) not be disturbed by any activity associated with the operation, or (2) be mitigated by measures included in the mining and reclamation plan and approved by the Authorized Officer.

**EXHIBIT B**

**BUREAU OF LAND MANAGEMENT**  
California Desert District  
Palm Springs-South Coast Resource Area  
400 So. Farrell Drive, Suite B-205  
Palm Springs, California 92262

PRODUCTION REPORT FOR MONTH ENDING \_\_\_\_\_, 19\_\_\_\_

PURCHASER \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

QUANTITY REMOVED \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

Attach copies of all weight tickets for the reporting period.

The United States Criminal Code (18 U.S.C. 1001) makes it a criminal offense to willfully make a false statement or representation to any Department or Agency of the United States as to any matter within its jurisdiction. Any person or persons making a false statement or representation shall be subject to a fine of up to \$10,000 and imprisonment for up to five years for each offense.